

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT L. BERRY : CIVIL ACTION  
 :  
 v. :  
 :  
 RITE AID CORPORATION : NO. 00-0049

MEMORANDUM AND ORDER

HUTTON, J.

May 16, 2001

Presently before this Court are Plaintiff's Motion for Leave of Court to Serve Supplemental Interrogatories Upon Defendant (Docket No. 21), Plaintiff's Motion to Compel Defendant's Answers to Interrogatories (Docket No. 22), Plaintiff's Motion to Extend Scheduling Order Deadlines (Docket No. 23), Defendant Rite Aid's Response to Plaintiff's Motion to Compel Answer to Interrogatories, Motion for Leave to Serve Supplemental Interrogatories and Motion to Extend Scheduling Order Deadlines (Docket No. 26), Praecipe to Strike Defendant's Reply Brief to Plaintiff's Response to Defendant's Motion for Summary Judgment (Docket No. 33), Defendant Rite Aid's Response to Plaintiff's Praecipe to Strike Defendant's Reply Brief to Plaintiff's Response to Defendant's Motion for Summary Judgment (Docket No. 34), Plaintiff, Robert L. Berry's Motion for Leave of Court to File a Reply Brief (Docket No. 28). For the following reasons, Plaintiff's Motions are **GRANTED in part and DENIED in part.**

**I. Plaintiff's Motion for Leave of Court to Serve  
Supplemental Interrogatories Upon Defendant**

Federal Rule of Civil Procedure 33(a) provides that "[l]eave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26(b)(2)." See Fed. R. Civ. P. 33(a). Rule 26(b)(2)(ii) provides that:

[t]he frequency or extent of the use of the discovery methods otherwise permitted under these rules . . . shall be limited by the court if it determines that . . . the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought . . . .

See Fed. R. Civ. P. 26(b)(2)(ii).

On March 22, 2001, Plaintiff filed a Motion for leave to file supplemental interrogatories. This motion was filed after Defendant filed its motion for summary judgment. Plaintiff now, over a year after a Complaint was filed in this case, has determined that the twenty-five interrogatories that were served on Defendant were not sufficient to allow Plaintiff to obtain all information that it needs to prepare "this complicated discrimination case for trial." See Pl.['s] Mot. to Extend Scheduling Order Deadlines, ¶¶ 8-9. The Court determines that Plaintiff has had ample opportunity by discovery to obtain the information sought. Plaintiff's request comes at the end of discovery and Plaintiff provides no reason for the delay. Thus, the Court denies Plaintiff's Motion.

## **II. Plaintiff's Motion to Compel Defendant's Answers to Interrogatories**

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Plaintiff seeks full and complete answers to Plaintiff's Interrogatories 5, 6, 14, 15, 17, 19, 22 and 23. Interrogatories 5 and 6 ask Defendant to identify other complaints of age or race discrimination alleged against Defendant. Interrogatory 5 requests information concerning all other complaints over the last ten years alleging claims of race or age discrimination or harassment against Defendant in Pennsylvania, New Jersey or Delaware. Interrogatory 6 requests information regarding each complaint identified in response to Interrogatory 5. Defendant objects to these interrogatories as irrelevant, overly broad, unduly burdensome and harassing. See Defs. Response to Pl.['s] Mot. to Compel Answers to Interrogatories, 5. Further, Defendant asserts that this information will not shed light on whether Plaintiff was demoted and not promoted based on his age or race. See id.

"The mere statement by a party that a discovery request is 'overly broad, burdensome, oppressive and irrelevant' is not adequate to voice a successful objection." See Barnes Foundation v. Township of Lower Merion, Civ. A. 96-372, 1996 WL 653114, \*2 (E.D. Pa. Nov 01, 1996). "The party opposing discovery also has the burden 'to clarify and explain its objections and to provide the factual support therefor.'" See id.

Here, Defendant's objections have failed to satisfy this standard. Defendant asserts that the information will not assist

Plaintiff in proving his case. The Court notes, however, that under Federal Rule of Evidence 26(b)(1) parties may obtain discovery regarding any matter which is relevant to the subject matter and the information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. The Court thus grants Plaintiff's Motion with respect to these Interrogatories.

Interrogatory 14, asks Defendant to describe in detail Defendant's reason for hiring each individual since 1995 who was hired as a Guard Coordinator in the Philadelphia area. The Court denies Plaintiff's Motion with regard to this Interrogatory because Plaintiff has already discovered the information sought in this interrogatory. See Defs. Response to Pl.['s] Mot. to Compel Answer to Interrogatories, 5.

With regard to Interrogatories 22, Defendant states that it has fully responded to the Interrogatory. See *id.* The Court thus denies Plaintiff's Motion with respect to this Interrogatory.

Defendant objects to Interrogatory 23 based on the assertion of the attorney-client privilege and the attorney work product doctrine. The Court grants Plaintiff's Motion because Defendant has failed to comply with Federal Rule of Civil Procedure 26(b)(5). Rule 26(b)(5) requires a party claiming privilege or protection of trial preparation material to "describe the nature of the documents, communications, or things not produced or disclosed in

a manner that, without revealing information itself privileged or protected, will enable the parties to assess the applicability of the privilege or protection." See Fed. R. Civ. P. 26(b)(5). The Court thus grants Plaintiff's Motion with regard to Interrogatory 23.

The Court notes that Plaintiff's request for answers to Interrogatories 15, 16, 17 and 19 is denied as moot because Defendant has indicated that it has responded in part and would provide complete responses. See *id.* at 4.

### **III. Plaintiff's Motion to Extend Scheduling Order Deadlines**

Plaintiff asks for an extension to this Court's Scheduling Order deadlines. "A scheduling order should not be modified except upon a showing of good cause and by leave of the district judge." Fed. R. Civ. P. 16(b). The Court has already provided the parties additional time through an amended scheduling order. See Amend. Scheduling Order dated December 6, 2000. As required by this Court's Amended Scheduling Order, Defendant filed a summary judgment motion on March 19, 2001. Plaintiff responded to Defendant's summary judgment motion on April 6, 2001.

Plaintiff seeks an extension of the expert disclosure deadline. In addition, Plaintiff requests an extension in order to depose two individuals. One individual, Charles Kane, was noticed on November 30, 2000, but was unable to attend because of ill health. Although Plaintiff indicates that this individual has not

been available until late March, 2001, Defendant notes that this individual's deposition was rescheduled for January 4, 2001. This deposition was cancelled fifteen minutes before it was scheduled to commence. Plaintiff asserts that this individual's deposition is necessary because he participated in the decision to hire another individual instead of Plaintiff.

In addition, Plaintiff claims Chris Milton is needed for deposition. Milton's name was listed in Defendant's self-executing documents served on Plaintiff on June 2, 2000. It was not until the end of the discovery period that Plaintiff sought to depose these individuals. Plaintiff fails to present good cause for failing to obtain this "necessary" deposition until the end of discovery.

The Court denies the Motion to extend the scheduling order in order to conduct further discovery. The Court, however, shall extend the deadline for disclosure of expert testimony.

**IV. Praecipe to Strike Defendant's Reply Brief to Plaintiff's Response to Defendant's Motion for Summary Judgment**

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Pursuant to Local Rule 7.1(c), the Court may permit further briefs if appropriate. See E.D. Pa. Local Rules of Civ. P. 7.1(c). Here, the Court accepts Defendant's Reply Brief. Thus, Plaintiff's Motion to strike Defendant's Reply Brief is denied.

**V. Plaintiff, Robert L. Berry's Motion for Leave of  
Court to File a Reply Brief**

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Plaintiff's Motion for Leave of Court to File a Reply Brief is granted and the Court consider's Plaintiff's Reply Brief filed with the Court.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT L. BERRY	:	CIVIL ACTION
	:	
v.	:	
	:	
RITE AID CORPORATION	:	NO. 00-0049

O R D E R

AND NOW, this 16<sup>th</sup> day of May, 2001, upon consideration of Plaintiff's Motion for Leave of Court to Serve Supplemental Interrogatories Upon Defendant (Docket No. 21), Plaintiff's Motion to Compel Defendant's Answers to Interrogatories (Docket No. 22), Plaintiff's Motion to Extend Scheduling Order Deadlines (Docket No. 23), Defendant Rite Aid's Response to Plaintiff's Motion to Compel Answer to Interrogatories, Motion to Extend Scheduling Order Deadlines and Motion for Leave to Serve Supplemental Interrogatories (Docket No. 26), Praecipe to Strike Defendant's Reply Brief to Plaintiff's Response to Defendant's Motion for Summary Judgment (Docket No. 33), Defendant Rite Aid's Response to Plaintiff's Praecipe to Strike Defendant's Reply Brief to Plaintiff's Response to Defendant's Motion for Summary Judgment (Docket No. 34), Plaintiff, Robert L. Berry's Motion for Leave of Court to File a Reply Brief (Docket No. 28), IT IS HEREBY ORDERED that Plaintiff's Motions are **GRANTED in part and DENIED in part.**



IT IS FURTHER ORDERED that:

1. Plaintiff's Motion for Leave of Court to Serve Supplemental Interrogatories Upon Defendant is **DENIED**;

2. Plaintiff's Motion to Compel Defendant's Answers to Interrogatories is **GRANTED in part and DENIED in part**;

3. Plaintiff's Motion to Extend Scheduling Order Deadlines is **GRANTED in part and DENIED in part**;

4. Plaintiff's Praecipe to Strike Defendant's Reply Brief to Plaintiff's Response to Defendant's Motion for Summary Judgment is **DENIED**; and

5. Plaintiff's Motion for Leave of Court to File a Reply Brief is **GRANTED**.

IT IS FURTHER ORDERED that Defendant shall respond to Interrogatories 5, 6 and 23 within ten (10) days of the date of this Order.

IT IS FURTHER ORDERED that all disclosure of expert testimony shall be completed within ten (10) days of the date of this Order.

BY THE COURT:

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HERBERT J. HUTTON, J.